

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

S&M BRANDS, INC. and)
INTERNATIONAL TOBACCO PARTNERS,)
LTD.,)
Plaintiffs,)
v.) Case No. 3:05cv0171
PAUL G. SUMMERS, in his official capacity as) Judge Thomas A. Wiseman, Jr.
Attorney General of the State of Tennessee,)
Defendant.)

ORDER

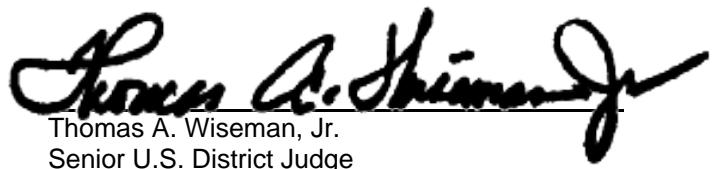
Before the Court is Plaintiff International Tobacco Partners, Ltd.'s motion for attorney fees and costs (Doc. No. 165). For reasons explained in the accompanying Memorandum Opinion, said motion is hereby **GRANTED IN PART and DENIED IN PART**.

More specifically, the Court finds that Plaintiff ITP, as the "prevailing party" on the issue of the retroactive application of the ASR Amendment to ITP's request for a release of escrowed funds relating to its 2003 cigarette sales in Tennessee, is entitled to an award of attorneys' fees pursuant to 42 U.S.C. § 1988, in an amount to be determined at a later date. This ruling is contingent upon ITP's compliance with the requirements of all applicable rules pertaining to requests for attorneys' fees. Further, any fee awarded will be commensurate with the relatively limited nature of ITP's success.

ITP's motion for an award of costs is denied without prejudice, as ITP is not the "prevailing party" for purposes of Fed. R. Civ. P. 54(d)(1).

It is so ORDERED.

Entry of this Order disposes of all pending issues in this case and, therefore, constitutes a final judgment, pursuant to Fed. R. Civ. P. 58, from which appeal may be taken.



Thomas A. Wiseman, Jr.
Senior U.S. District Judge